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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

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# No. 280

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GEORGE W. TABER, Treasurer of Payne County, Oklahoma,

*Petitioner,*

*vs.*

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation.

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

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Guy L. Horton,
*Stillwater, Oklahoma;*
L. O. Lytle,
*Sapulpa, Oklahoma,*
*Counsel for Petitioner.*
Leon J. York,
*County Attorney of Payne County, Oklahoma;*
Geo. H. Jennings,
*Sapulpa, Oklahoma,*
*Of Counsel.*

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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1936**

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# No. 280

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GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA,

*Petitioner,*

*vs.*

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION.

---

## PETITION FOR WRIT OF CERTIORARI.

---

*To the Honorable Supreme Court of the United States of America:*

Your petitioner above named respectfully states that this cause was instituted in the District Court of Payne County, State of Oklahoma, on the 2nd day of March, 1934, against George W. Taber, Treasurer of Payne County, Oklahoma, for the recovery of certain taxes paid under protest by the respondent, Indian Territory Illuminating Oil Company, a corporation. In its petition, respondent claimed that it was the owner of an oil and gas lease duly approved by the Department of the Interior, on allotted lands belonging to Restricted Pawnee Indians, which land is located in Payne County, Oklahoma, and that in the development of

said lease, respondent had placed thereon certain oil field equipment composed of derricks, machinery, casing and other equipment which was used in drilling for and the production of oil and gas on said lease. That respondent was acting as a Federal instrumentality and agent in the operation and development of said lease and that such drilling equipment and machinery used in connection therewith was exempt from State taxation on the grounds that it became a part of the instrumentality.

That answering such petition, your petitioner took the position that such tax was the application of a uniform nondiscriminatory tax upon the personal property of such agent as distinguished from a tax upon the instrumentality itself, and further, is too remote and indirect to impede or hamper the instrumentality and is therefore authorized.

On the 26th day of April, 1934, the District Court of Payne County, Oklahoma, decreed that respondent was a Federal agent or instrumentality and that the tax sought to be imposed was a tax on a Federal agency and would interfere with the operation of a governmental function.

That on the 12th day of March, 1935, the Supreme Court of the State of Oklahoma, pursuant to an appeal from such judgment and decree of the District Court of Payne County, Oklahoma aforesaid (which appeal was docketed as George W. Taber, Treasurer of Payne County, Oklahoma, Plaintiff in Error *vs.* Indian Territory Illuminating Oil Company, a corporation, defendant in error, No. 25794), affirmed the judgment and decree of the District Court of Payne County, Oklahoma.

That thereafter, and within the time allowed by the rules of the Supreme Court of the State of Oklahoma this petitioner filed a petition for rehearing, and that thereafter, and on the 30th day of April, 1935, said petition for rehearing was by the Supreme Court of the State of Oklahoma denied.

That thereafter, on May 6, 1935, and within the time permitted by the Rules of the Supreme Court of the State of Oklahoma, this petitioner filed an application for leave to file a second petition for rehearing in said cause, and on the 6th day of May, 1935, permission was granted to file said second petition for rehearing in said cause, the same being filed May 6, 1935.

That on the 12th day of May, 1936, the Supreme Court of the State of Oklahoma denied petitioners second petition for rehearing, and readopted its opinion.

That on the 19th day of May, 1936, and within the time allowed by the rules of the Supreme Court of the State of Oklahoma, your petitioner filed a petition for an order staying the issuance of the mandate for sufficient time to enable petitioner to appeal to the Supreme Court of the United States, and on May 19, 1936, an order staying the mandate for a period of 90 days was made to enable this petitioner to effect an appeal to the Supreme Court of the United States, a certified copy of the entire record of such cause is hereby furnished, attached to and made a part of this petition, and for identification marked Exhibit "A".

Your petitioner states that he has exhausted every legal remedy available in the Supreme Court of the State of Oklahoma to protect his rights and has no other court to which he may appeal for his rights, save to the Supreme Court of the United States.

Upon review of the proceedings in the trial court the Supreme Court of the State of Oklahoma decided:

> "Lessee of restricted Indian land under lease for oil and gas development is instrumentality of federal government, and personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of federal agency or instrumentality."

Your petitioner believes and therefore asserts that the final decision of the Supreme Court of the State of Okla-

homa, the highest court of the State, was against the rights, privileges and immunities of your petitioner under the Constitution and the Statutes of the United States in the following particular: That said court failed to distinguish between a uniform non-discriminatory tax upon the personal property of a Federal agent used in the operation of said agency or instrumentality and a direct tax upon the instrumentality itself.

Your petitioner states that the instant case involved an important Federal question which has not been directly determined by this Honorable Court, but should be passed on by this Honorable Court.

Your petitioner states that the Supreme Court of the State of Oklahoma has decided the Federal question herein involved in conflict with the applicable decisions of this Honorable Court (said cases being cited by supporting brief herein) and in conflict with the applicable decisions of the Supreme Court of the State of Oklahoma, and has denied the validity of the taxing statutes of the State of Oklahoma.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of, and under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, commanding said court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Oklahoma in this case which is entitled in that court: "In the Supreme Court of the State of Oklahoma, George W. Taber, Treasurer of Payne County, Oklahoma, plaintiff in error, *vs.* Indian Territory Illuminating Oil Company, a corporation, defendant in error, No. 25794," to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further

relief or remedy in the premises as to this Court may seem appropriate, and that said judgment of the Supreme Court of Oklahoma be reversed by this Honorable Court.

GUY L. HORTON AND
L. O. LYTLE,
*Counsel for Petitioner.*
LEON J. YORK,
*County Attorney of Payne County,*
*State of Oklahoma.*
GEO. JENNINGS,
*Of Counsel for Petitioner.*

STATE OF OKLAHOMA,
*County of Payne, ss:*

Guy L. Horton, of lawful age, being duly sworn, says that he is one of the counsel for the petitioner herein, and of counsel and attorney for Petitioner herein, in the foregoing petition for Writ of Certiorari addressed to this Honorable Court, and has had personal charge of the prosecution of this cause; that he prepared and has read said petition and know the contents thereof and that the statements and allegations therein made are true to the best of his knowledge, information and belief.

GUY L. HORTON.

Subscribed and sworn to before me this 21st day of July, 1936.

[SEAL.] MINNIE NESTER,
*Notary Public.*

My Commission expires November 17, 1938.

## SUPPORTING BRIEF.

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The opinion of the Supreme Court of the State of Oklahoma is not yet officially reported, but is found in 57 Pac. (2d) 1167. The judgment of the Court was finally rendered May 12, 1936, on petition for rehearing.

Your petitioner states that its specific objections to the judgment of the Supreme Court of the State of Oklahoma are as follows: The Court, in its opinion in the second syllabus, says:

> "Lessee of restricted Indian Land under lease for oil and gas development is instrumentality of federal government, and personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of federal agency or instrumentality."

The Supreme Court of the State of Oklahoma found that *Gillespie* v. *State of Oklahoma,* 257 U. S. 501, 42 S. Ct. 171, 172, 66 L. Ed. 338; *Jaybird Mining Co.* v. *Weir, County Treasurer,* 271 U. S. 609, 46 S. Ct. 592, 593, 70 L. Ed. 1112, furnished a precedent for the decision in the case at bar; this your petitioner denies, and says and alleges that an examination of the above mentioned decisions will show that the same are not applicable here. Your petitioner here expressly relies in support of the proposition above named on *Susquehanna Power Company* v. *State Tax Commission of Maryland,* 75 L. Ed. 1042, 283 U. S. 291; *Alward* v. *Johnson,* 75 L. Ed. 496, 282 U. S. 509; *McCulloch* v. *Maryland,* 4 Wheat. 316, 436 4 L. Ed. 579.

Your petitioner says that respondent is not primarily a Federal agent. It is a corporation for profit, incorporated under the laws of the State of New Jersey, doing business in the State of Oklahoma, and is a person with whom the

Federal Government has found it convenient or profitable to deal in carrying out its policy towards the Pawnee Tribe of Indians, and in this case what the State is attempting to do is tax the property of this corporation within its boundaries, and we say this is a proper exercise of the taxing powers of the State.

In the very earliest case of this Honorable Court touching this question, a non-discriminatory tax on the property of an agent was held not to be in violation of the taxing power of the State; *McCulloch* v. *Maryland,* 4 Wheat. 316, 4 L. Ed. 579. Other Federal cases making the distinction found in *McCulloch* v. *Maryland, supra,* are: *Thomas* v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. Ed. 740; *Wagoner* v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. Ed. 1154; *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U. S. 375, 25 S. Ct. 50, 49 L. Ed. 242; *Montana Catholic Missions* v. *Missoula County,* 200 U. S. 119, 26 S. Ct. 197, 50 L. Ed. 398; *Alward* v. *Johnson,* 282 U. S. 509, 51 S. Ct. 273, 75 L. Ed. 496, 75 A. L. R. 9; and *Gromer* v. *Standard Dredging Co.,* 224 U. S. 362, 32 S. Ct. 499, 56 L. Ed. 801; *Indian Territory Illuminating Oil Company* v. *Board of Equalization of Tulsa County;* (*Indian Territory Illuminating Oil Company* v. *Board of County Commissioners of Payne County*), 288 U. S. 325, 53 S. Ct. 388, 77 L. Ed. 812. Also, in this connection see *Thompson* v. *Union Pacific Railroad Co.,* 9 Wall. (76 U. S.) 579, 591, 19 L. Ed. 792; *Susquehanna Power Co.* v. *State Tax Commission of Maryland,* 283 U. S. 291, 51 S. Ct. 434, 435, 75 L. Ed. 1042; *Osborn* v. *Bank of United States,* 9 Wheat. 738, 6 L. Ed. 204, 234; *First National Bank* v. *Commonwealth of Kentucky,* 9 Wall. (76 U. S.) 353, 19 L. Ed. 701; *Union Pac. Railroad Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. Ed. 787; *New York, Lake Erie & W. Railroad Co.* v. *Pennsylvania,* 158 U. S. 431, 15 S. Ct. 896, 39 L. Ed. 1043; *Central Railroad Co.* v. *State of California,* 162 U. S. 91, 16 S. Ct. 766, 40 L. Ed. 903; *Gromer* v.

*Standard Dredging Co.*, 224 U. S. 362, 363, 32 S. Ct. 499, 56 L. Ed. 801; *Choctaw, O. & G. R. Co.* v. *Harrison*, 235 U. S. 292, 35 S. Ct. 27, 59 L. Ed. 234; *Ackerlind* v. *United States*, 240 U. S. 531, 36 S. Ct. 438, 60 L. Ed. 783; *Choctaw, O. & G. R. Co.* v. *Mackey*, 256 U. S. 531, 41 S. Ct. 582, 65 L. Ed. 1076; *Fort Leavenworth Railroad Co.* v. *Railroad Co.* v. *Lowe*, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264; *Western Union Tel. Co.* v. *Attorney General*, 125 U. S. 530, 8 S. Ct. 961, 31 L. Ed. 790.

We, therefore, respectfully submit this cause to this Honorable Court for its consideration.

GUY L. HORTON,
L. O. LYTLE,
*Counsel for Petitioner.*
GEO. H. JENNINGS,
LEON J. YORK,
*County Attorney of Payne County Oklahoma,*
*Of Counsel.*

(8070-C)